

GAME OF SKILL SHALL NOT TANTAMOUNT TO GAMBLING OR BETTING
UNDER THE CENTRAL GOODS AND SERVICES ACT, 2017

1. INTRODUCTION

In a recent judgment passed on May 11th, 2023 in the case of ***Gameskraft vs Directorate General of Goods and Services Tax Intelligence*** (hereinafter referred to as the “**Case**”), the Hon’ble Karnataka High Court (hereinafter referred to as the “**Court**”) held that ‘games of skill’, whether played online or offline such as Rummy, with or without stakes shall not fall under the ambit of ‘gambling or betting’ as mentioned under Entry 6 of Schedule III of the Central Goods and Services Act, 2017 (hereinafter referred to as the “**CGST Act**”). Accordingly, as per Section 7 (2) of the CGST Act such ‘games of skill’ shall fall outside the definition of ‘supply of actionable claim’ for the purpose of taxation at a higher rate.

2. FACTUAL BACKGROUND OF THE CASE

Gameskraft Technologies Private Limited (hereinafter referred to as “**Petitioner**”/ “**GTPL**”) is an online intermediary company incorporated in June, 2017 that runs technology platforms which allow users to play skill based online games against each other. The Petitioner is registered under the CGST Act and the Karnataka Goods and Services Tax Act, 2017. While the Petitioner claimed that it is a legally compliant company and has timely paid proper goods and services tax (“**GST**”), the Directorate General of Goods, Services Tax Intelligence (hereinafter referred to as the “**Respondent**”) claimed that the Petitioner is involved in betting/gambling and has attempted to evade payment of GST by misclassifying their ‘supply’ as services instead of ‘actionable claims’ which are goods and mis-declaring their taxable value. The Respondent undertook search and seizure operations at the office premises of GTPL, seized several documents, devices and later attached the bank accounts of GTPL. Further, a show-cause notice was issued against the Petitioner under Section 74 (1) of the CGST Act (“**Impugned SCN**”).

In the present Case, the Court dealt with several writ petitions challenging the attachment orders, an intimation notice issued by the Respondent under Section 74 (5) of the CGST Act, and the Impugned SCN requiring GTPL to pay over INR 21,000 crores in tax arrears. Several intervention applications were filed by All India Gaming Federation and E-Gaming Federation (hereinafter referred to as the “**Intervenors**”) in support of the Petitioner as they are equally aggrieved by the actions of the Respondent.

3. SUBMISSIONS BY THE PETITIONERS AND INTERVENORS

- a) It was contended by the Petitioners that it merely hosts the games on its platform and the discretion to play a game and the stake for which it is to be played entirely lies with the players. The Petitioner has no role/influence insofar as the playing of the games are concerned. The Petitioner alleged that the Respondent has failed to understand the business of the Petitioner as the only set of service provided by the Petitioner is the facilitation service

as an online intermediary and in consideration receives only a 'platform fee' on which GST has been duly deposited by the Petitioner.

- b) The Petitioner submitted that it is specifically stated in its terms and conditions that the monies deposited by the players are held in "trust" by the Petitioner and therefore, completely negates the allegations in the Impugned SCN that the entire 'buy-in' amount is the Petitioner's income. It was further stated by the Petitioner that the withdrawal wallet which is created for each player is the property of the player and the decisions to withdraw the winnings from the wallet or to use the same for further games is absolutely with the player.
- c) It was further submitted that it is well settled that 'games of skill' played with monetary stakes do not partake the character of betting and it still remains within the ambit of 'games of skill' only. Further, online gaming platforms do not supply 'goods' on their platforms and they only render services on which GST is paid. Online gaming platforms are essentially intermediaries, where a platform is created for third parties to connect for playing skill games against each other. The stakes placed by a player while playing a game of skill amount to actionable claims but the platform itself is not involved in or providing the actionable claim. Therefore, the claim that the Petitioner is involved in supply of actionable claims and hence is subject to a higher tax i.e. 28% instead of 18% under the CGST Act is fallacious.

4. SUBMISSIONS OF THE RESPONDENT

- a) The Respondent argued that the since skill is not the qualifying criteria to play a game on the Petitioner's platform and the only criteria is the placing of stakes, a player's success in the game principally depends on chance and hence the game of Rummy given the facts and circumstances shall be a 'game of chance'. It was further stated that the platform fee charged by the Petitioner is not a 'service fee' as it varies depending on the total amount of stakes at a particular table and not uniformly to all players.
- b) The Respondent further submitted that while it was already established that Rummy is a game of skill, when any person wagers, stakes or bets on the outcome of a game of Rummy, such activity of wagering, staking or betting on the unknown and uncertain outcome would amount to betting or gambling. In such a case, the transaction would be a supply of actionable claims in the form of betting and gambling and consequently, as per the scheme of CGST read with rule 31A the transaction would be taxed at 28% on 100% of the bet value.

5. ANALYSIS AND FINDINGS OF THE COURT

- a) Upon careful consideration of the precedents cited by the Petitioners and Respondents, the Court held that there is a distinction between 'games of skill' and 'games of chance' which has been discussed in several decisions of the courts. Accordingly, whether a 'game of skill' is played online or physically, with or without stakes would not change the nature of such game. While playing for stakes, the player makes a value judgment on his/her skill and therefore, the outcome of the game is determined predominantly by the skill of the players.
- b) Since GST is levied on the supply of goods and services, the Court examined the definition of 'supply' under the CGST Act. Section 7(1)(a) of the Act states that 'supply' includes "*all*

forms of supply of goods or services made or agreed to be made for a consideration by a person in the course of furtherance of business". Further, the definition of 'business' under Section 2(17) of the CGST Act includes '*wager or any other similar activity*'. Since the definition of business is much wider in the CGST Act, the Court further discussed upon the interpretation of games of skill to clarify whether they would fit into the realm of actionable claim under the CGST Act or would fit into the realm of the sub-sect of actionable claim which includes lottery, betting and gambling. The Court held that wherein an activity the 'exercise of skill' can control the 'chance' element involved in the particular activity, such that the better skill would prevail more often than not, such activity qualifies as a game of skill and therefore, it was laid by the Court that though the definition in the legislation may be wide, the games of skills could be severed for separate treatment from game of chances.

- c) In light of Section 7 (2) of the CGST Act read with Schedule 3, taxation of 'games of skill' falls outside the scope of the term 'supply'.

CONCLUSION

In light of the aforementioned observations, the Court quashed the Impugned SCN and allowed the writ petitions filed by GTPL, providing relief to the online gaming industry. The Court also concluded that games of skill, whether played with or without stakes shall not amount to gambling and therefore, online intermediaries providing such games shall continue to be taxed at a rate of 18% on the fee received by them under the CGST Act.

This judgement has brought relief to many gaming platforms from significant tax exposure under the GST laws by further establishing a clear distinction between games of skill and games of chance including games played online, with or without stakes.

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